



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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September 25, 2021

To
Mr. CS Mawri,
National Focal Point - Human Rights Defenders & Assistant Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA, New Delhi –110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert-India – Urgent Appeal for Action – Assam: Misuse of law and firing on unarmed protestors protesting the eviction drive by Assam police resulting in deaths of three protestors and injuring others.

Greetings from Human Rights Defenders Alert -India!

HRD Alert-India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our shock over the horrific firing on unarmed protestors by the Assam Police during the Assam Government's 'illegal encroachers' drive in Darrang district of Assam. The policemen fired at unarmed citizen protestors, killing three protestors including one minor in the police firing and nearly 20 injured. A shocking video has also emerged of a photographer hired by the district administration jumping on an injured or dead protestor's chest repeatedly without the policemen doing anything to stop or arrest him.

About the Human Rights Defenders:

Residents of Kirokata Char village, Sipajhar area of Darrang district of Assam, who were opposing the eviction by the Assam government. The citizens killed in the police firing were: Moinul Haque (30 year old vegetable grower), Shekh Farid (a 12 year old) and Saddam Husaain.

Source of the Information:

Media Reports

The Perpetrators:

- Mr. Sushanta Biswa Sarma, Superintendent Of Police, Darrang district of Assam and Police officials of Assam Police
- Mr. Bijaya Shankar Baniya, Photographer hired by the district

Administration

Date of Incident:

September 23, 2021

Place of Incident:

Kirokata Char village, No. 3 Dhalpur area, Sipajhar area of Darrang district of Assam

Background:

Late night on Wednesday, September 22, 2021, the administration of Assam served an eviction notice to the residents of Kirakota Char to evict the alleged 'illegal encroachers' from land which the state government wants to repossess for a state farming project.

Details of the Incident:

On Thursday, September 23, 2021, the residents started a protest against the eviction after which the administration reportedly "promised that the villagers will be rehabilitated before the eviction". Thereafter, nearly 100 armed policemen from the Assam Police reached Dhalpur No. 3, to evict the residents of Sipajhar area of Darrang district. There were a few people from the small community peacefully protesting, when the police started indiscriminate firing which resulted in death of three persons including one minor. At least 20 people have been injured.

Videos from the firing site show many policemen firing at targets behind the trees. Police initially told media that there were no casualties.

A video from the firing has become viral on the social media. It depicts dozens of policemen firing while a lone man with a stick (now identified as Mr. Moinul Haque- a 30 year old vegetable grower) rushes at them. Dozens of armed policemen thrash him horrifically till Mr. Hoque falls on the ground with a hole in his chest. Then the photographer hired by the district administration, Mr. Bijaya Shankar Baniya, is seen horrifically assaulting the injured or dead man by jumping on his body repeatedly while dozens of policemen watch them without taking any action to stop or arrest the photographer.

The SP of Darrang, Mr. Sushanta Biswa Sarma (also the brother of the Assam CM, Mr. Himanta Biswa Sarma) has claimed that locals attacked them with stones and that they had to use force and that nine policemen were also injured. He claimed ignorance about the police opening fire. While the state has claimed the eviction drive against illegal immigrants, media reports show all the killed had documents as Indian citizens.

While the photographer Mr. Bijaya Bania has been arrested by the police, no case of homicide has been registered against the police officers who fired at unarmed protestors.

We are horrified by the act of the local administration and police of Assam in violating all human rights of unarmed protestors and procedures of national and international law in controlling protests and committing culpable homicide. Under Article 21 of the Constitution of India, right to life is assured. The Article 3 of the

Universal Declaration also provides that "everyone has the **right to life**, liberty and security of person."

The Indian Penal Code defines 'culpable homicide' as: "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." It is unbelievable that 100 police officers didn't know that shooting at unarmed protestors will result in their deaths, including that of a minor.

The Code of Conduct for Police In India under Section 4 says, "In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used." The provisions should also be ensured in conformity with Articles 4 and 5 of the UN Basic Principles on the use of force and firearms.

According to the judgement in **Andhra Pradesh Civil Liberties vs State Of A.P**, "the words "procedure established by law" are not ineffective and lifeless but are expressions of the faith of the people who have sanctioned interference with the life of a person only by a procedure which is reasonable, fair and just."

The UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels; (article 1). That "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration" (Article 12.2).

The Hon'ble Commission itself in its guidelines in "**Letter to Chief Ministers regarding the Procedure to be followed in cases of deaths in police encounters**" in 1997 has said that "*Under our laws the police have not been conferred any right to take away the life of another person. If, by his act, the policeman kills a person, he commits the offence of culpable homicide whether amounting to the offence of murder or not unless it is proved that such killing was not an offence under the law.*"

While its being claimed by the state that the police acted in self-defence in **Andhra Pradesh Civil Liberties vs State Of A.P** the court said that "*If the power of the police to kill anybody and attribute it to self-defence is accepted, then Article 21 of the Constitution of India would become meaningless.*"

Firing at unarmed citizens, by the police is clearly a violation of the UN Code of Conduct of the General Assembly. This use of disproportionate force by police against peaceful protestors was an act of reprisal which clearly violates UN Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution which clearly states that in the article 3 commentary " (b) National law ordinarily restricts the use of

force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.”

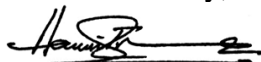
Appeal:

HRDA appeals to the Hon'ble Commission to urgently:

- Initiate an immediate, independent, thorough, transparent, effective and impartial investigation through its investigative wing into the incident of firing and killing of protestors on September 23, 2021, and allegations of use of excessive force or misuse of law by police preceding and subsequent to the firing.
- The inquiry should investigate to what extent the standard operating procedures in management of assemblies and use of force were violated by the relevant government and police functionaries in the Darrang firing and the subsequent human rights violations that took place in order to fix the liability of those officials responsible for specific delinquent acts. This should also include both acts omission and commission.
- Depending on the inquiry direct the Director General of Police of Assam to take stern action against those policemen and officials guilty of intimidation, use of excessive force, and firing leading to death.
- Direct the Director General of Police of Assam to file an FIR against the SP of Darrang and the policemen involved in the firing as violations of national and international law and take stern action against them.
- Direct the Director General of Police of Assam to file an FIR against the district photographer attached to the district administration and the negligence by the policemen in allowing him to indulge in the beastly act of stomping on an injured/ dead protestor and not arresting the photographer immediately afterwards.
- Order the Chief Secretary of Assam to immediately provide adequate compensation to the families of the killed protestors.
- Direct the state government of Assam to immediately stop the eviction drive.

Looking forward to your immediate action in this regard,

Yours sincerely,



Henri Tiphagne

National Working Secretary